

No. 1227

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UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

HUGH MADDEN and WILLIAM  
DONOHUE,

*Appellants,*

vs.

JENNIE C. McKENZIE,

*Appellee.*

FILED  
OCT -2 1905

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TRANSCRIPT OF RECORD.

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Upon Appeal from the United States District Court for the  
District of Alaska, Third Division.

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*In the United States Circuit Court of Appeals for the Ninth  
Circuit.*

HUGH MADDEN and WILLIAM DONOHUE,	} Appellants,
vs.	
JENNIE C. McKENZIE,	} Respondent.

**Order Extending Return Day.**

Now, on this 8th day of June, 1905, the above-entitled cause coming on to be heard before the Judge of the District Court for the Territory of Alaska, Third Division, at Fairbanks, Alaska, upon the petition of the appellants, appearing by their counsel, Messrs. Claypool, Stevens, Kellum & Cowles, and the respondent, Jennie C. McKenzie, appearing by her counsel, Messrs. McGinn & Sullivan, the said appellants request an order extending the time within which to docket said cause and to file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and show that the same is necessary by reason of the great distance, slow and uncertain communication between said Fairbanks, Alaska, and the city of San Francisco, California; and the said Judge of said court, upon hearing the said motion, and being fully advised in the premises, and considering that good cause has been shown for the granting of the same.

It is hereby ordered that the time within which the said appellants shall docket said cause on appeal and the return day named in the citation issued by this court be enlarged and extended to and including the 1st day of August, 1905.

JAMES WICKERSHAM,

Judge of the District Court for Territory of Alaska,  
Third Division.

Due service of the within order and receipt of a copy thereof is hereby admitted this 8 day of June, 1905.

McGINN & SULLIVAN,

Attorneys for Respondent Jennie C. McKenzie.

[Endorsed]: No. 1227. United States Circuit Court of Appeals, for the Ninth Circuit. Hugh Madden et al. vs. Jennie C. McKenzie. Order Extending Return Day. Filed Aug. 7, 1905. F. D. Monckton, Clerk.

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*In the United States Circuit Court of Appeals for the Ninth Circuit.*

HUGH MADDEN and WILLIAM  
DONOHUE,

Appellants,

vs.

JENNIE C. McKENZIE,

Respondent.

**Further Order Extending Return Day.**

Now, on this first day of August, A. D. 1905, the above-entitled cause coming on to be heard before the Judge

of the District Court for the Territory of Alaska, Third Division, at Fairbanks, Alaska, upon the petition of the appellants, appearing by their counsel Messrs. Claypool, Stevens, Kellum and Cowles, and the respondent, Jennie C. McKenzie, appearing by her counsel Messrs. McGinn and Sullivan, the said appellants request an order to further extend the time within which to docket said cause, and to file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, State of California, and show that the same is necessary by reason of the great distance and uncertain communication between the town of Fairbanks, Alaska, and the said city of San Francisco, California, and that due diligence has been used upon the part of appellants to docket said case within the time heretofore allowed, to wit, August 1, A. D. 1905; and the said Judge of said District Court, upon hearing the said motion, and being fully advised in the premises, and considering that good cause has been shown for the granting of the same, and no objection being made by counsel for the respondent:

It is hereby ordered that the time within which the said appellants shall docket said cause on appeal and the return day required in the citation issued by this Court, and in the order heretofore made extending the return day, be enlarged and extended to and including the first day of September, A. D. 1905.

JAMES WICKERSHAM,

Judge of the District Court for the Territory of Alaska,  
Third Division.

Service of the foregoing order admitted, and the receipt of a copy thereof acknowledged this first day of August, A. D. 1905.

McGINN & SULLIVAN,  
Attorneys for Respondent.

[Endorsed]: 1227. In the United States Circuit Court of Appeals, for the Ninth Circuit. Hugh Madden and William Donohue vs. Jennie C. McKenzie. Further Order Extending Return Day. Filed Aug. 29, 1905. F. D. Monckton, Clerk.

*In the District Court for Territory of Alaska, Third Division.*

JENNIE C. McKENZIE,

Plaintiff,

vs.

HUGH MADDEN and WILLIAM  
DONAHUE,

Defendants.

### Stipulation as to Printing.

It is hereby stipulated and agreed that in the printing of the record herein for consideration of the court on appeal, that the title of the court and cause in full on all papers shall be omitted, excepting the first page, and insert in the place and stead thereof "*title of court and cause.*"

Dated this 8th day of July, 1905.

McGINN & SULLIVAN,  
Attorneys for Plaintiff.

CLAYPOOL, STEVENS, KELLUM & COWLES,  
Attorneys for Defendants.



[Endorsed]: No. 1227. United States Circuit Court of Appeals, for the Ninth Circuit. Hugh Madden et al. vs. Jennie C. McKenzie. Stipulation Relative to Printing Record. Filed Aug. 7, 1905. F. D. Monckton, Clerk.

United States of America,  
Territory of Alaska,  
Third Division. } To wit:

At a special term of the District Court for the Territory of Alaska, Third Division, begun and held at the courthouse in the town of Fairbanks, Alaska, on the 10th day of April, and being the first day of June in the year of our Lord one thousand nine hundred and five, and within the said term. Present: The Honorable JAMES WICKERSHAM, District Judge. Among other things were the following proceedings, to wit:

*In the District Court for Territory of Alaska, Third Division.*

JENNIE C. McKENZIE,  
vs.  
HUGH MADDEN and WILLIAM DONOHUE,  
Plaintiff, }  
Defendants. } No. 315.

**Complaint.**

Plaintiff, for cause of suit against the above-named defendants, complains and alleges:

## I.

That on the 23d day of September, 1904, plaintiff and the defendants entered into an agreement in writing wherein and whereby the said defendants, for and in consideration of a monthly rental to be paid by the plaintiff to the defendants, as in said agreement in writing set forth, did lease, demise and let unto the plaintiff for a term to expire one year from the 23d day of September, 1904, to wit, on the 23d day of September, 1905, with the privilege of a renewal for a like term upon the same conditions, the following described property, to wit:

All of the second story of the building known as the Madden Hotel, consisting of 19 rooms, situated on the easterly one-half of Lot 14, in Block One, east, facing and abutting Front Street and extending in a southerly direction towards Second Avenue, a distance of 110 feet, and no more. Which said agreement in writing is in words and figures as follows, to wit:

“This indenture, made this 23d day of September, A. D. 1904, witnesseth:

That Hugh Madden and William Donahue of Fairbanks, Alaska, lessors, do hereby lease, demise and let unto Jennie C. McKenzie, of said city and District, lessee, the following described premises, to wit:

All of the second story of the building known as the “Madden House,” consisting of nineteen rooms, situate on the easterly one-half ( $\frac{1}{2}$ ) of Lot Four (4) in block One (1) east, facing and abutting Front Street, and extend-

ing in a southerly direction toward Second Avenue, a distance of one hundred and ten (110) feet, and no more.

To have and to hold for the term of one (1) year, to wit, from the 23d day of September, 1904, to the 23d day of September, 1905, with the privilege of leasing the same for another year upon the same terms, if the said lessors Hugh Madden and William Donahue, are then the owners of said building, yielding and paying therefor the rent of twenty-four hundred dollars (\$2400.00) lawful money of the United States of America, as follows: Two hundred dollars (\$200.00) on the 23d day of each and every month during said term in advance; and the said lessee promises to pay said rent in such lawful money, as follows, to wit, the sum of two hundred dollars (\$200.00) monthly in advance; and to quit and deliver up the premises to the lessors or their agent or attorney, peaceably and quietly at the end of the term, in as good order and condition, reasonable use and wear thereof and damage by the elements excepted, are now or may be put into, and to pay the rent as above stated during the term; also the rent as above stated for such further time as the lessee may hold the same; and not to make or suffer any waste thereof, nor permit any person or persons to improve the same or make or suffer any alteration therein without the approbation of the lessors thereto in writing having been first obtained; and that the lessors or their agent may enter to view and make improvements, and to expel the lessee if she shall fail to pay the rent as aforesaid or to make or suffer any strip or waste thereof;

And it is further agreed between the parties hereto that as a part of the consideration for this lease, the said Jennie C. McKenzie is to furnish a furnace and all necessary apparatus and fixings sufficient and necessary to heat the whole of said building, the said lessors agreeing to put the same in working condition and to pay all the expenses thereof, and to furnish all fuel necessary for heating said building during the said term.

And it is further agreed between the parties hereto that in case of the sale of the said building or premises by the lessors, that upon thirty (30) days' notice to quit by the said lessors to the said lessee, in writing, then this lease shall immediately become void, and the said lessee shall vacate the said premises at the end of said thirty days; and should default be made in the payment of any portion of said rent when due and for three (3) days thereafter, the said lessors, their agent, or attorney, may re-enter and take possession, and at their option terminate this lease.

In witness whereof said parties have hereunto set their hands and seals the day and year first above written.

(Sd) HUGH MADDEN.

WILLIAM E. DONOHUE.

JENNIE C. McKENZIE.

In the presence of:

M. L. SULLIVAN.

EDGAR WICKERSHAM.

United States of America, }  
District of Alaska. } ss.

This is to certify that before me, M. L. Sullivan, a notary public in and for the District of Alaska, duly commissioned and sworn, personally came Hugh Madden, William Donahue and ——— McKenzie, to me known to be the individuals described in, and who executed the foregoing lease, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein set forth.

Witness my hand and official seal this 23d day of September, 1904.

[Notarial Seal] (Sd) M. L. SULLIVAN,  
Notary Public in and for the District of Alaska.

II.

That immediately upon the execution of said agreement of sale the plaintiff entered into the possession of said property above described, and ever since said time has been and now is entitled to the possession of the same; that ever since said 23d day of September, 1904, the plaintiff has been in possession of said property, save and except that on the 29th day of May, 1905, the defendants herein, and while the plaintiff was in the quiet and peaceable enjoyment of said premises, wrongfully and unlawfully and by force and violence and by threats of force and violence ejected and ousted the plaintiff from the possession of the same.

## III.

That the plaintiff herein has in all respects complied with said agreement and with each and all of the conditions thereof, and has paid the installments of rent, therein specified upon the 23d day of each and every month, since said lease was executed, and on the 23d day of May, 1905, the plaintiff paid to the defendants the sum of two hundred dollars (\$200.00), being the rent in advance for said premises for the month ending June 23d, 1905, and the said defendants did receive and accept said money in full payment of the rent for the month to expire on the 23d day of June, 1905, and gave their receipt therefor.

## IV.

That on the 29th day of May, 1905, and while the plaintiff herein was in the quiet and peaceable possession of the property herein described, under and by virtue of the lease aforesaid, the defendants herein, without the consent and against the protest of this plaintiff, did wrongfully and unlawfully and by force and with threats of force and violence, oust and eject the plaintiff from the possession of said premises, and ever since said time have and do now wrongfully, unlawfully and forcibly withhold the possession of said premises from the plaintiff, and do threaten and assert that the lease herein described is terminated and forfeited, and that the plaintiff shall not be permitted to again enter upon or be permitted to continue in the possession of said premises.

V.

That the defendants and each and both of them, are insolvent and unable to respond in damages in any sum whatsoever that might be recovered by the plaintiff against the defendants, by reason of the acts aforesaid. And unless an order of this Honorable Court is made restraining and prohibiting the defendants and each of them and all persons claiming by, through or under them, from going upon and withholding the possession of said premises, from this plaintiff, and unless an order of this Honorable Court is made restoring the plaintiff to her said possession, the plaintiff will suffer great and irreparable loss and injury.

VI.

That the plaintiff has no plain, adequate or speedy remedy at law.

VII.

That by reason of the acts aforesaid the plaintiff has been damaged in the sum of five hundred dollars (\$500.00).

Wherefore the plaintiff prays a decree of this Honorable Court ordering and adjudging:

(1) That the plaintiff is entitled to the immediate possession of the premises herein described, and that the same be forthwith returned to her.

(2) That the defendants, and all persons claiming by, through or under them, since the execution of said lease, be restrained and prohibited from in any way disturbing the possession of the plaintiff to said premises.

(3) That a mandatory injunction forthwith issue, restoring the plaintiff to the possession of said premises, and that said mandatory injunction, upon the final hearing of this cause may be rendered perpetual.

(4) That the plaintiff recover her costs and disbursements, and for such other and further relief as to this Honorable Court may seem just and equitable in the premises.

McGINN & SULLIVAN,  
Attorneys for Plaintiff.

United States of America, }  
District of Alaska, } ss.

I, Jennie C. McKenzie, being duly sworn say: I am the plaintiff in the within entitled action; that I have read the foregoing complaint, know the contents thereof and the allegations therein are true as I verily believe.

JENNIE C. McKENZIE.

Subscribed and sworn to before me this 31st day of May, 1905.

[Seal]

E. S. McGINN,  
Notary Public for District of Alaska.

Filed in the United States District Court, District of Alaska, Third Division. June 1, 1905. E. J. Stier, Clerk.



And on, to wit, the same day, in said court, among other things were the following proceedings:

[Title of Court and Cause.]

**Order to Show Cause.**

Be it remembered that on the 1st day of June, 1905, the plaintiff in the above-entitled action applied for an order based upon the complaint herein, citing and requiring the defendants and each of them to be and appear in this court on the 2d day of June, 1905, and show cause, if any, why a mandatory injunction should not be issued restraining and, prohibiting the defendants and each of them and all persons claiming by, through and under them from interfering with or molesting the plaintiff in the use and enjoyment of the premises in the complaint described, and why said plaintiff should not be restored to the full and complete control, use and benefit of said premises.

And it appearing to the Court from said complaint duly verified, that this is a proper case for the granting of an injunction restoring to the plaintiff the possession of the premises in the complaint described, and restraining and prohibiting the defendants and each of them from interfering in any way with the plaintiff's use, control and enjoyment of said premises, unless cause to the contrary be shown, it is therefore on motion,

Ordered and adjudged, that the defendants and each of them be and appear in this court and cause on the 2d day of June, 1905, at the hour of 10:00 o'clock A. M.,

to show cause, if any, why the order prayed for should not be granted.

And said defendants are hereby notified that if at said time they fail to appear and show cause why such an order should not be made, that this Court will make an order restoring the plaintiff to the possession of the property described in the complaint herein, and shall enjoin the defendants and each of them from molesting the plaintiff in her use and enjoyment of said premises in any way.

Done in open court at Fairbanks, Alaska, this 1st day of June, A. D. 1905.

JAMES WICKERSHAM,

District Judge.

Entered Journal No. 3, page 415, June 1st, 1905.

Filed in the United States District Court, District of Alaska, 3d Division. June 1, 1905. E. J. Stier, Clerk.

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And on, to wit, the 2d day of June, 1905, the same being one of the regular judicial days of said April, 1905, term of said Court, among other the following proceedings were had:

[Title of Court and Cause.]

**Motion to Dismiss.**

Come now the defendants in the above-entitled cause and in response to the application for a writ of restitution and order of injunction herein, move the Court to dismiss said cause upon the grounds:

1st: That this Court has no jurisdiction of the defendants herein, or either of them.

2d. That this Court has no jurisdiction of the subject matter herein.

3d: That according to the allegations contained in plaintiff's complaint, plaintiff has a plain, speedy and adequate remedy at law.

4th: That plaintiff's complaint does not state facts sufficient to constitute a cause of action against defendants, or either of them, in favor of plaintiff.

CLAYPOOL, STEVENS, KELLUM & COWLES,  
Attorneys for Defendants.

Filed in United States District Court, District of Alaska, 3d Division, June 2, 1905. E. J. Stier, Clerk.

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[Title of Court and Cause.]

**Order Overruling Motion to Dismiss.**

And now, to wit, June 2d, 1905, this action coming on to be heard on the motion of the defendant to dismiss, the Court after hearing argument of counsel of both parties, overrules said motion, to which defendant excepts, and exception allowed.

Entered Journal, No. 3, page 427, June 2d, 1905.

[Title of Court and Cause.]

**Demurrer.**

Come now the defendants in the above-entitled action, and demur to the complaint of plaintiff herein, and for grounds of demurrer say:

I.

That the Court has no jurisdiction of the person of the defendants, or of the subject of this action;

II.

That the complaint of plaintiff herein does not state facts sufficient to constitute a cause of action in favor of plaintiff and against the defendants, or either of them.

CLAYPOOL, STEVENS, KELLUM & COWLES,

Attorneys for Defendants.

Filed in the United States District Court, District of Alaska, 3d Division. June 2, 1905. E. J. Stier, Clerk.

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[Title of Court and Cause.]

**Order Denying Demurrer.**

And now, to wit, June 1st, 1905, this cause coming on to be heard on the demurrer of the defendant to the complaint filed herein, the Court after hearing argument of counsel of both parties, denies the demurrer, to which the defendant excepts, and exception is allowed.

Entered Journal, No. 3, page 427, June 1st, 1905.

[Title of Court and Cause.]

**Answer.**

Come now the defendants in the above-entitled cause, and answering the complaint of plaintiff herein, say:

**I.**

Defendants admit the allegations contained in paragraph one of said complaint of plaintiff.

**II.**

Defendants deny each and every allegation contained in paragraph two of plaintiff's said complaint.

**III.**

Defendants admit the allegations contained in paragraph three of plaintiff's said complaint, excepting that defendants deny that plaintiff has in all respects complied with said agreement, and with each and all of the covenants thereof, as alleged in said paragraph.

**IV.**

Defendants deny the allegations contained in paragraph four of said complaint, saving and excepting that they admit that on or about the 29th day of May, 1905, defendants, without the consent of plaintiff, took possession of said premises, and ever since said time have been, and now are in possession of the same, to the exclusion of the plaintiff, and admit that the defendants assert that said lease, in said complaint described, has been terminated and forfeited by plaintiff, and that plaintiff shall not be permitted to again enter upon, or be permitted to continue in the possession of the same.

## V.

Defendants deny each and every allegation contained in paragraph five of said complaint of the plaintiff.

## VI.

Defendants deny each and every allegation contained in paragraph six of said complaint of plaintiff.

## VII.

Defendants deny that by reason of the acts complained of in said complaint of plaintiff, that plaintiff has been damaged in the sum of five hundred dollars (\$500.00) or any other sum, as alleged in paragraph seven of said complaint, or otherwise.

And for further answer, and as an affirmative defense to said complaint of said plaintiff, defendants allege:

1. That on the 23d day of September, A. D., 1904, plaintiff and defendants entered into an agreement in writing as set forth in paragraph one of plaintiff's complaint herein.

2. That immediately upon the execution of said agreement plaintiff entered into the possession of the property described in said lease, and ever since said date until the 29th day of May, A. D. 1905, occupied said premises as a lodging-house, and furnished a portion of the furniture for the rooms of said second story of said premises.

3. That at the time of the execution of said lease the defendants were conducting, and ever since said time have conducted, are now conducting, and expect to continue to conduct on the first floor of said Madden

House, and immediately under the premises claimed by plaintiff in said lease, a retail liquor business.

4. That after the date of the execution of said lease, and the taking possession of said premises thereunder by plaintiff, to wit, on or about the 26th day of September, A. D. 1904, plaintiff and defendants made and entered into an oral agreement, which oral agreement substituted in part, and took the place of said lease above described, wherein it was mutually agreed between the said parties thereto that said new agreement should comprehend and embrace all of the terms indicated in said written lease, concerning plaintiff's occupancy of said premises, as therein stated, and in addition to the terms therein stated plaintiff should at all times until September 23, 1905, use her best efforts to keep all of said rooms in said premises occupied as a hotel or lodging-house by persons most likely to patronize the bar of defendants, immediately under said rooming-house, and that plaintiff further agreed that she would personally occupy said premises and manage said rooming-house, and as a consideration for the same plaintiff was to receive, and did receive, all liquors sent to her apartments in said building at half rates, and further received from defendants' bar a commission of twenty-five per cent (25%) on all liquors, cordials, and other drinks, as well as cigars purchased by her, or sent to her apartments in said premises.

5. That all of the terms of said agreement were carried out upon the part of plaintiff and defendants until about the 28th day of May, A. D. 1905, when plaintiff,

## V.

Defendants deny each and every allegation contained in paragraph five of said complaint of the plaintiff.

## VI.

Defendants deny each and every allegation contained in paragraph six of said complaint of plaintiff.

## VII.

Defendants deny that by reason of the acts complained of in said complaint of plaintiff, that plaintiff has been damaged in the sum of five hundred dollars (\$500.00) or any other sum, as alleged in paragraph seven of said complaint, or otherwise.

And for further answer, and as an affirmative defense to said complaint of said plaintiff, defendants allege:

1. That on the 23d day of September, A. D., 1904, plaintiff and defendants entered into an agreement in writing as set forth in paragraph one of plaintiff's complaint herein.

2. That immediately upon the execution of said agreement plaintiff entered into the possession of the property described in said lease, and ever since said date until the 29th day of May, A. D. 1905, occupied said premises as a lodging-house, and furnished a portion of the furniture for the rooms of said second story of said premises.

3. That at the time of the execution of said lease the defendants were conducting, and ever since said time have conducted, are now conducting, and expect to continue to conduct on the first floor of said Madden



House, and immediately under the premises claimed by plaintiff in said lease, a retail liquor business.

4. That after the date of the execution of said lease, and the taking possession of said premises thereunder by plaintiff, to wit, on or about the 26th day of September, A. D. 1904, plaintiff and defendants made and entered into an oral agreement, which oral agreement substituted in part, and took the place of said lease above described, wherein it was mutually agreed between the said parties thereto that said new agreement should comprehend and embrace all of the terms indicated in said written lease, concerning plaintiff's occupancy of said premises, as therein stated, and in addition to the terms therein stated plaintiff should at all times until September 23, 1905, use her best efforts to keep all of said rooms in said premises occupied as a hotel or lodging-house by persons most likely to patronize the bar of defendants, immediately under said rooming-house, and that plaintiff further agreed that she would personally occupy said premises and manage said rooming-house, and as a consideration for the same plaintiff was to receive, and did receive, all liquors sent to her apartments in said building at half rates, and further received from defendants' bar a commission of twenty-five per cent (25%) on all liquors, cordials, and other drinks, as well as cigars purchased by her, or sent to her apartments in said premises.

5. That all of the terms of said agreement were carried out upon the part of plaintiff and defendants until about the 28th day of May, A. D. 1905, when plaintiff,

in violation of her agreement and said lease, without any notice or warning to defendants, moved all of the furniture of said premises, excepting about four rooms thereof, out of said premises so leased and occupied by her, and for the purpose of cheating and defrauding defendants, and hindering their said business, plaintiff then and there implored, advised and commanded the occupants of said premises to leave said premises and go with her to the rooming-house, dance-hall and saloon of Joe Ward, situate on Fourth and Cushman Streets, Fairbanks, Alaska.

6. Defendants further allege, that thereafter, and on the 29th day of May, 1905, defendant Donohue notified plaintiff that she had violated her contract with defendants, and the letter and spirit of said contract and lease, and that the said Donohue, being then the owner of said lease, declared the same forfeited.

7. Defendants further allege that thereafter, and on, to wit, the 29th day of May, A. D. 1905, the defendant Donohue took possession of all of said premises peaceably, and while the said plaintiff was out of the possession of the same, and has ever since held possession thereof, and is now in possession of the same, and of all of said premises and occupying the same as a hotel and lodging-house.

8. That the real estate upon which said Madden House is located is claimed to be owned, and is in part owned by Fred E. Voitke, and that said building situate upon said premises is owned by the defendant Donohue, and that the said defendant Donohue now holds

possession of the real estate upon which said building is situate under and by virtue of a lease from the said Fred E. Woitke, and pays as ground-rent therefor the sum of five hundred and fifty dollars (\$550.00) per month, and that the said defendant Donohue and the defendant Madden at the time of entering into said lease with the plaintiff owned said building, and held the ground upon which said building is located from the said Fred E. Woitke, as owner, under a written lease.

9. That plaintiff at all times since the execution of said lease has admitted the title of defendants, and defendants' grantee, the said defendant Donohue, as landlord, and has claimed no other source of title, right or interest therein.

10. Defendants are informed, believe and allege, that plaintiff owns an interest in the operation and profits of a competitive business to that of defendants, to wit, that certain saloon, dance-hall, and lodging house known as Joe Ward's, situate on Fourth Avenue and Cushman Street, in the Town of Fairbanks, Alaska, and has unlawfully, fraudulently, and with intent to financially ruin the defendants herein, entered into a conspiracy with the said Joe Ward and his associates, for the purpose of disposing of defendants' competitive business, and intended to, if allowed so to do, pay to defendants the rent called for in said lease, and keep during the term of said lease, said second story of said building closed, thereby cutting off the patronage due to defendants from said defendants' bar-room, thereby causing defendants to close their said saloon, and in

that event to cause the said defendant Donohue to lose the building situate on said premises for the nonpayment of said ground-rent to the said Fred E. Woitke, all against the rights of defendants herein.

11. Defendants allege that the defendant Donohue is wholly solvent, and is worth over and above his just debts, in property in Alaska not exempt from execution, in excess of the sum of ten thousand dollars, and is, therefore, able to respond in damages to plaintiff for any damages which she may sustain by reason of the acts complained of in her said complaint herein.

12. Defendants further allege, that plaintiff has a plain, speedy and adequate remedy at law.

13. That for a valuable consideration the defendant Madden did, on or about the 28th day of February, A. D. 1905, assign his interest in said lease and contract existing between plaintiffs, as lessee, and the said Madden and Donohue, as lessors, to the defendant Donohue.

14. That by reason of the wrongful and unlawful acts of plaintiff, as aforesaid, and the interruption and interference with the defendants' said business, the defendant Donohue has been damaged by plaintiff in the sum of one thousand dollars (\$1,000.00).

Wherefore defendants demand judgment against the plaintiff for one thousand dollars (\$1,000.00) damages and for costs of suit.

CLAYPOOL, STEVENS, KELLUM & COWLES,

Attorneys for Defendants.

United States of America, }  
Territory of Alaska, } ss.  
Third Division. }

William Donohue, being first duly sworn, upon his oath deposes and says:

That he is one of the defendants in the above-entitled cause; that he has read the foregoing answer, knows the contents thereof, and that the same is true as he verily believes.

WILLIAM DONOHUE.

Subscribed and sworn to before me this 1st day of June, A. D. 1905.

[Seal] MORTON E. STEVENS,  
Notary Public in and for Alaska, Residing at Fairbanks.

Filed in the United States District Court, District of Alaska, 3d Division. June 2, 1905. E. J. Stier, Clerk.

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[Title of Court and Cause.]

**Affidavit of William Donohue.**

United States of America, }  
Territory of Alaska. } ss.

William Donohue, being first duly sworn, upon his oath deposes and says:

1st: That he is one of the defendants in the above-entitled action.

2d: That the plaintiff herein did not pay her rent of \$200.00 for the premises claimed by her in the complaint herein on the 23d day of May, 1905, but paid the same on the 26th day of May, 1905, and obtained a receipt from affiant dated the 23d day of May, 1905, paying to the 23d day of June, 1905, and at said time plaintiff said nothing to affiant to indicate in any way that she intended to move from the Madden House or to move any of her furniture, and gave no warning whatsoever that she intended to close said rooming-house.

3d: That afterwards, to wit, in the afternoon of the 28th day of May, 1905, plaintiff began to make preparations for packing and moving her furniture, and moved the larger portion of said furniture on said day, and left in said building only the furniture in four rooms, which rooms were occupied by tenants who had paid their rent in advance, as affiant is informed and believes, and would not move.

4th: That affiant, upon discovering the plaintiff's moving from said building and taking her furniture from said premises and learning of her requesting and demanding of the tenants of said building to move with her to the saloon, dance-hall and rooming-house of Joe Ward on the corner of Fourth Avenue and Cushman Street, in Fairbanks, Alaska, affiant enquired of plaintiff what she was doing and why she was moving from said premises, and what she intended to do with the house, and plaintiff evaded the answer, but finally stated that she had possession of the house and it was her business as to what she would do with the same, as

she had her rent paid. She was apparently guarded in her statements and refused to talk or to give defendant any satisfaction as to her intention concerning said premises.

5th: Affiant then stated to plaintiff that she could not close up this house (meaning the Madden House) and notified plaintiff that he would take possession of the house and run it as soon as plaintiff left the premises;

6th: Affiant further states that before proceeding further in the premises he consulted his lawyers, and told them all of the facts as near as affiant knew at that time, and upon the advice of affiant's lawyers, affiant caused notice to be served upon plaintiff calling plaintiff's attention to her violation of the contracts and lease existing, and declared said lease and contracts forfeited. And afterwards, on the same day, to wit, the 29th day of May affiant, acting on the advice of counsel, finding said premises unoccupied, peaceably and without force entered into said premises, took possession of the same, secured furniture for the most of the rooms of the said Madden House, at a large expense to the defendants herein, and secured occupants for the rooms of said property, and has ever since maintained, and still maintains peaceable possession of said premises; and that affiant, as one of the defendants herein, is enjoying the benefits of having the upper story of said Madden House filled with tenants, and is enjoying the patronage of such tenants to the Madden House Bar.

7th: That affiant on said 29th day of May, after taking possession of said premises, notified plaintiff that he held the small remnant of furniture which she left in said premises subject to her orders; and immediately on said day plaintiff sent for the remnant of said furniture and took it from the premises in dispute. And affiant is informed and verily believes that she took it to the rooming-house of the said Joe Ward.

8th: Affiant further states that plaintiff has no property of any nature whatsoever in said Madden House; that she voluntarily left said premises and abandoned the same so far as making any use of said premises, and that she fully intended to close said premises to gratify her personal spite against defendants herein, and for the further purpose of carrying out, as affiant is informed and believes, a conspiracy entered into between plaintiff and the said Joe Ward, and his associates, to enhance the patronage of the said Joe Ward's place and to deprive defendants of the fruits of a business which defendants have, for the past year, been building, and thereby destroy a competition which then and which now exists;

9th: Affiant further states that he has at all times acted in the best of faith towards plaintiff; that he has been careful to act under the advice of his attorneys in the premises, and that the possession of said premises was obtained as aforesaid peaceably, and after the said plaintiff had left said premises; and at no time did affiant or his codefendant break the peace or use force in the premises.

WILLIAM DONOHUE.



Subscribed and sworn to before me this 2d day of June, A. D. 1905.

[Seal]

MORTON E. STEVENS,  
Notary Public for Alaska.

Filed in the United States District Court, District of Alaska, 3d Division. June 2, 1905. E. J. Stier, Clerk.

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[Title of Court and Cause.]

**Affidavit of Hugh Madden.**

United States of America, }  
Territory of Alaska, } ss.  
Third Division. }

Hugh Madden, being first duly sworn, upon his oath deposes and says:

That he is one of the defendants in the above-entitled action; that he has read the answer of defendants herein, knows the contents, and that the same is true as he verily believes.

That affiant is interested in the bar of the Madden House, immediately below the second story claimed by plaintiff herein; that each of said room are connected with the bar-room below by electric bells, from which defendants have heretofore derived, and still derive, a large and lucrative patronage from the occupants of the hotel, or rooming-house above said bar-room, and that the defendants would be wholly unable to pay the rent for said premises if the upper story of said building be closed.

That at the time of the payment of rent, to wit, on or about the 23d day of May, A. D. 1905, upon the part of plaintiff, paying to the 23d day of June, A. D. 1905, plaintiff gave no warning or indication whatsoever that she intended to vacate said premises, and that on or about the 28th or 29th day of May, A. D. 1905, without warning, as aforesaid, plaintiff began to move her furniture from the rooms of said hotel, and moved them to the saloon and rooming house known as Joe Ward's, in Fairbanks, Alaska, and affiant then and there protested. Plaintiff thereafter stated to affiant that she would put "you," meaning the defendants, "on the bum," meaning, as affiant verily believes, that she intended to financially ruin defendants, and do away with the competition to Joe Ward's saloon, in which business affiant is informed and believes, that plaintiff is interested.

Affiant further avers, upon information and belief, that defendants will be able to prove an unlawful conspiracy between plaintiff and the said Joe Ward and his associates, and that defendants will be able to prove by competent witnesses that the said Joe Ward stated, prior to the 29th day of May, A. D. 1905, "that he had interested Mrs. McKenzie, meaning plaintiff, in his enterprise; that the said Mrs. McKenzie was going to leave the Madden House and come to his place, bringing with her all the furniture of the Madden House, and the present tenants therein, and that the said Mrs. McKenzie had a lease from Madden and Donohue, and that they, meaning Mrs. McKenzie and the said Joe Ward, intended to pay the rent under said lease until the end

of the lease in September, which he could well afford to do, in order to dispense with the competition of the Madden House Saloon and Hotel."

Affiant further states that the defendants are unable to get such voluntary proof at this time, but that he believes he can prove the same by process of subpoena at the final trial of this cause.

Affiant further states that the defendants have been put to great expense, to wit, about the sum of \$2,500.00, to secure furniture for about 19 rooms of said hotel, and have about filled said hotel or rooming-house with tenants, and if the Court would dispossess defendants at this time the same would work great and irreparable injury to defendants, and that plaintiff is wholly insolvent and unable to respond in damages in the premises.

HUGH MADDEN.

Subscribed and sworn to before me this 21st day of June, A. D. 1905.

[Seal]

MORTON E. STEVENS,

Notary Public in and for Alaska, Residing at Fairbanks.

Filed in the United States District Court, District of Alaska, 3d Division. June 2, 1905. E. J. Stier, Clerk.

[Title of Court and Cause.]

**Affidavit of Jack Reagan.**

United States of America, }  
Territory of Alaska. } ss.

Jack Reagan, being duly sworn, upon his oath says:

That he is acquainted with the plaintiff and the defendants in the above-entitled cause; that on the 27th day of May, 1905, he was in the employ of William Donohue in the Madden House in Fairbanks, Alaska, and had been in such employ for about eight months last past, and that he is still in such employ in the capacity of floor manager on the first floor of said Madden House.

Affiant further states that he was at such time, and had been for some time last past, on very good terms with the plaintiff, and that the night of May 27, 1905, plaintiff called affiant into her apartments on the second story of the Madden House and inquired of affiant how much wages he was receiving downstairs, and affiant informed her that he was then receiving \$10.00 per day, but that he expected to receive more wages as soon as business would pick up this spring and the coming summer. Plaintiff answered affiant saying that "Business will never pick up with this house [meaning the Madden House]. I have a lease on the place until next September, and I am going to move with my furniture to Joe Ward's dance-hall and lodging-house, and will keep these rooms bare, and see that no women occupy them. I want to get all of the girls I can to go

with me over there, and I will give them free room rent and will not charge them anything for rooms, and if you will come over with us we will give you \$15.00 a day, with a guarantee for all summer, and you are to bring all the women you can with you, and I know you can bring several by talking to them." Plaintiff also stated to affiant that "We have the whole thing over there [referring to Joe Ward's dance-hall]. My friend George [meaning George Krau] and I own everything down there, and even if we do not make much at the start we can run just the same, while the others cannot. We will put this house out of business, as I control the upstairs." And affiant replied that "It is a cinch that they cannot run the downstairs of this house [meaning the Madden House] without the upstairs"; and plaintiff answered "Yes, that is right, and I intend to hold the upstairs." Affiant then replied to plaintiff in substance that Madden and Donohue had treated affiant in all respects satisfactorily, and gave him work during the winter when they could have employed other persons probably more advantageously than affiant, and that affiant did not care to change at this time, even on plaintiff's promise of better wages. Plaintiff then answered affiant that "Well, I think you are making a mistake, because you will see in a couple of weeks that the other house will be doing all the business, and this house [meaning the Madden House] will be doing nothing."

JACK REAGAN.

Subscribed and sworn to before me this 2d day of June, A. D. 1905.

[Seal]

J. C. KELLUM,  
Notary Public for Alaska.

Service admitted this 2d day of June, A. D. 1905.

MCGINN & SULLIVAN,  
Attorneys for Plaintiff.

Filed in United States District Court, District of Alaska, 3d Division. June 3, 1905. E. J. Stier, Clerk.

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[Title of Court and Cause.]

### Order Settling Bill of Exceptions.

Now on this 8th day of July, 1905, came the defendants Hugh Madden and William Donohue, by their attorneys, Messrs. Claypool, Stevens, Kellum & Cowles, and the plaintiff Jennie C. McKenzie, also came by her attorneys, Messrs. McGinn & Sullivan, and the said defendants present their statement of facts and bill of exceptions for settlement herein on their appeal to the United States Circuit Court of Appeals for the Ninth Circuit, which bill of exceptions consists of the foregoing typewritten pages of the testimony, consisting of affidavits filed in said cause and attached hereto; and there being no objections thereto upon the part of plaintiff, and no amendments proposed thereto; and the said proceedings and evidence as aforesaid being and constituting all of the evidence and proceedings in said cause, not of record; and inasmuch as the same does not

appear of record in said action and is correct in all respects and is hereby approved, allowed and settled, the same and the whole thereof is hereby made a part of the record herein.

Done in the same term of court as the trial thereof, and within the time allowed by order of said court, and by the same Judge who presided at the proceedings in said cause, this 8th day of July, A. D. 1905.

JAMES WICKERSHAM,  
Judge.

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[Title of Court and Cause.]

**Motion for Judgment.**

Comes now the above-named plaintiff and moves the Court for judgment on the pleadings in the above-entitled cause, for the reasons:

I.

That the answer filed by the defendants herein does not constitute a defense to the cause of action set forth in the complaint.

II.

That the cause of action set forth in plaintiff's complaint is admitted by the answer of the defendants.

McGINN & SULLIVAN,  
Attorneys for Plaintiff.

Service of a true copy of the within motion is hereby accepted this 5th day of June, 1905.

CLAYPOOL, STEVENS, KELLUM & COWLES,  
Attorneys for the Defendants.

Filed in the United States District Court, District of Alaska, Third Division. June 5, 1905. E. J. Stier, Clerk.

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[Title of Court and Cause.]

### **Judgment.**

Be it remembered that on this 6th day of June, 1905, came on regularly for hearing the motion of the plaintiff for judgment on the pleadings in the above-entitled cause, McGinn & Sullivan, appearing as attorneys for the plaintiff and Claypool, Stevens, Kellum & Cowles, appearing as attorneys for the defendants.

And it appearing to the Court from the pleadings in the above-entitled cause, that on the 23d day of September, 1904, the defendants leased to the plaintiff the premises described in the complaint and hereinafter described, which said lease is in words and figures as is set forth in paragraph I of plaintiff's complaint; and, that immediately upon the execution of said lease and pursuant thereto, the plaintiff entered into the possession of said premises hereinafter described, and continued in the use, occupation and possession thereof until the 29th day of May, 1905, when the defendants wrongfully and unlawfully and against the consent of the plaintiff took possession of said premises, and ever since said time have been and now are in the possession of the same, to the exclusion of the plaintiff, and that the defendants assert that the plaintiff shall not be permitted to again enter upon, or be permitted to continue in the possession of the same.



And it further appearing to the Court from the pleading that said entry of the defendants is without right, and that the defendants now wrongfully and unlawfully withhold the possession of said premises from the plaintiffs;

Now, therefore, the Court, after hearing the arguments of counsel of the respective parties, and being fully advised in the premises, orders and adjudges:

I.

That the plaintiff is the legal owner of a legal estate for years in and to the property described in the complaint herein, described as follows:

All of the second story of the building known as the Madden Hotel, consisting of 19 rooms, situated on the easterly one-half ( $\frac{1}{2}$ ) of lot 14, in block one, east, facing and abutting Front Street; and extending in a southerly direction towards Second Avenue, a distance of 110 feet, and no more. Situated in the town of Fairbanks, Alaska, which estate for years is to expire upon the 23d day of September, 1905, unless the plaintiff herein shall elect to continue the same in force for a period to expire on the 23d day of September, 1906.

II.

That the plaintiff is entitled to the present and immediate right to the possession of said premises, and that the defendants wrongfully withhold the same from her.

III.

That the plaintiff is entitled to recover her costs and disbursements herein, and that execution and a writ of

restitution may issue to enforce the provisions of this judgment.

Dated at Fairbanks, Alaska, this 8th day of June, A. D. 1905.

JAMES WICKERSHAM,

District Judge.

Entered Journal No. 3, page 438, June 8, 1905.

Filed in the United States District Court, District of Alaska, Third Division. June 5, 1905. E. J. Stier, Clerk.

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[Title of Court and Cause.]

### Assignment of Errors.

Come now the defendants, Hugh Madden and William Donohue, and file the following assignment of errors, upon which they rely:

I.

That the Court erred in denying defendants' motion to dismiss the above-entitled cause.

II.

That the Court erred in overruling defendants' demurrer to plaintiff's complaint in said cause.

III.

That the Court erred in granting plaintiff's motion for judgment on the pleadings in said action.

IV.

That the Court erred in rendering and entering judg-

ment against defendants in favor of plaintiff in said action.

Wherefore, defendants Hugh Madden and William Donohue pray that the judgment or decree of said Court be reversed and set aside, or modified, and for such other relief as they are entitled to receive.

CLAYPOOL, STEVENS, KELLUM & COWLES,  
Attorneys for Defendants.

Service of within admitted this 8th day of June, A. D. 1905.

McGINN & SULLIVAN,  
Attorneys for Plaintiff.

Filed in the United States District Court, District of Alaska, Third Division. June 8, 1905. E. J. Stier, Clerk.

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[Title of Court and Cause.]

### **Motion for Appeal.**

Now on this 8th day of June, 1905, come the defendants, Hugh Madden and William Donohue, by their counsel, Messrs. Claypool, Stevens, Kellum & Cowles, and represent unto this Honorable Court that they feel themselves aggrieved by the rulings, decisions and judgment rendered in this cause, and that said judgment is one from which an appeal lies to the United States Circuit Court of Appeals, for the Ninth Circuit, and that they desire to appeal from this court in said cause to said Appellate Court.

Wherefore, defendants pray for an order of court allowing an appeal herein to said United States Circuit Court of Appeals for the Ninth Circuit; that the Court fix the amount of bond, and that the same be, when given and approved, a supersedeas as well as a bond for costs and damages on appeal.

CLAYPOOL, STEVENS, KELLUM & COWLES,  
Attorneys for Defendants.

Service of above admitted this 8th day of June, A. D. 1905.

McGINN & SULLIVAN,  
Attorneys for Plaintiff.

Filed in the United States District Court, District of Alaska, Third Division. June 8, 1905. E. J. Stier, Clerk.

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[Title of Court and Cause.]

### Order Allowing Appeal.

Now on this 8th day of June, 1905, the same being one of the regular judicial days of the special term of this court, held at Fairbanks, Territory of Alaska Third Judicial Division, this cause coming on to be heard upon the petition of defendants, Hugh Madden and William Donohue, for an appeal, and the said defendants appearing by their counsel, Messrs. Claypool, Stevens, Kellum & Cowles, and the plaintiff appearing by her counsel, Messrs. McGinn & Sullivan, and the Court being advised in the premises:

It is ordered that the appeal of the defendants, Hugh Madden and William Donohue, in said cause, to the United States Circuit Court of Appeals, for the Ninth Circuit, be, and the same is hereby, allowed; and that a certified transcript of the record, evidence and exhibits, and all proceedings herein be transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the return day of said appeal and citation be fixed at thirty days from the date hereof, and that said defendants, Hugh Madden and William Donohue, shall have thirty days from this date within which to prepare and file their statements of facts and bill of exceptions herein.

It is further ordered that the bond on appeal of the said Hugh Madden and William Donohue be, and the same is hereby fixed at the sum of five thousand dollars (\$5,000.00) the same when given and approved to act as a supersedeas bond as well as a bond for costs and damages on appeal; and that all proceedings in said cause on execution or otherwise are hereby stayed.

JAMES WICKERSHAM,

Judge.

Entered Journal No. 3, page 439, June 8, 1905.

Filed in United States District Court, District of Alaska, Third Division. June 8, 1905. E. J. Stier, Clerk.

[Title of Court and Cause.]

### Bond on Appeal.

Know all men by these presents, that we, Hugh Madden and William Donohue, of the town of Fairbanks, Territory of Alaska, as principals, and Daniel A. McCarty and David Fairburn, of the same place, as sureties, are held and firmly bound unto Jennie C. McKenzie, in the full and just sum of five thousand dollars (\$5,000.00), to be paid to the said Jennie C. McKenzie, her attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 8th day of June, A. D. 1905.

Whereas, lately, at a term of the District Court for the Territory of Alaska, Third Division, in a suit pending in said court between said Jennie C. McKenzie, as plaintiff, and the said Hugh Madden and William Donohue, as defendants, wherein the said plaintiff sued for the possession of the second story of that certain building known as the Madden House, situate on the easterly one-half of lot four, in block one, east, between First and Second Avenues, in the town of Fairbanks, Territory of Alaska, Third Division, and for damages against defendants for the wrongful detention of said premises; a judgment was rendered against said defendants on the pleadings in said action. And the said Hugh Madden and William Donohue are about to obtain from

said court an order allowing an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse the said decree and final judgment in the aforesaid suit, and a citation directed to said Jennie C. McKenzie, plaintiff above named, is about to be issued, citing and admonishing her, the said plaintiff, to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at San Francisco, State of California.

Now the condition of this obligation is such that if the said Hugh Madden and William Donahue shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them, or either of them, if they fail to make their plea good, and shall fully pay the judgment in said cause rendered or to be rendered, and pay all just damages for delay, and costs and interest on appeal, and pay all damages for the use and detention of the property in controversy in said cause, as well as all costs of suit and appeal, and shall in all respects abide and perform the orders and judgments of the Appellate Court upon their said appeal, then the above obligation is to be void; otherwise to remain in full force and virtue.

HUGH MADDEN. [Seal]

WILLIAM DONOHUE. [Seal]

DANIEL A. McCARTY. [Seal]

DAVID FAIRBURN. [Seal]

United States of America, }  
 Territory of Alaska. } ss.

Daniel A. McCarty and David Fairburn, the persons named in and who subscribed the above and foregoing undertaking as sureties thereto, being first severally and duly sworn, each for himself says:

That he is a resident within the territory of Alaska; that he is not a counselor, attorney at law, marshal, clerk of any court, or other officer of any court; that he is worth the sum specified in the foregoing undertaking, to wit, the sum of five thousand dollars (\$5,000.00), exclusive of property exempt from execution and over and above all just debts and liabilities.

DANIEL A. McCARTY.

DAVID FAIRBURN.

Subscribed and sworn to before me this 8th day of June, A. D. 1905.

[Seal]

MORTON E. STEVENS,

Notary Public for Alaska.

Sufficiency of sureties on the within bond approved this 8th day of June, A. D. 1905.

JAMES WICKERSHAM,

Judge of said Court.

Filed in the United States District Court, District of Alaska, Third Division. June 8, 1905. E. J. Stier, Clerk.



[Title of Court and Cause.]

**Citation.**

The President of the United States, to Jennie C. McKenzie, Above-named Plaintiff, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an order allowing appeal, made and entered in the above-entitled cause, in which Jennie C. McKenzie is plaintiff and respondent, and the said Hugh Madden and William Donohue are defendants in said action and appellants in said appeal, to show cause, if any there be, why the decree and judgment rendered in said cause in the District Court for the Territory of Alaska, Third Division, against the defendants herein, should not be set aside, corrected and reversed, and why speedy justice should not be done to the said Hugh Madden and William Donohue in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States of America, this 8th day of June, A. D. 1904, and of the Independence of the United States the one hundred and twenty-ninth.

**JAMES WICKERSHAM,**

Judge of the District Court for the Territory of Alaska,  
Third Division.

Attest: **EDWARD J. STIER,**

**Clerk.**

Due service of the within citation and receipt of a copy thereof admitted this — day of June, A. D. 1905.

McGINN & SULLIVAN,  
Attorneys for Plaintiff.

[Endorsed]: 315. In the District Court. McKenzie vs. Madden. Citation. Filed in the United States District Court, District of Alaska, 3d Division. Jun. 8, 1905. E. J. Stier, Clerk.

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#### Acknowledgment of Service.

Service of the foregoing transcript of record by receipt of a copy thereof admitted this 8th day of July, 1905.

McGINN & SULLIVAN,  
Attorneys for Plaintiff.

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[Title of Court and Cause.]

#### Clerk's Certificate to Transcript.

I, Edward J. Stier, clerk of the District Court for the Territory of Alaska, Third Division, hereby certify the foregoing 47 typewritten pages, numbered from 1 to 47 inclusive, to be a full, true and correct copy of the record, bill of exceptions, assignment of errors and all proceedings in the above-entitled cause, as the same remains of record and on file in the office of the clerk of said court; and that the same is in full compliance with the order of said court allowing an appeal of said cause.

That pages 45 and 46 constitute the original citation and proof of service.

I further certify that the costs of the foregoing record on appeal are eleven and 95/100 dollars, and that said amount was paid by the defendants above named.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Fairbanks, Alaska, this 10th day of July, A. D. 1905.

[Seal]

EDWARD J. STIER,

Clerk.

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[Endorsed]: No. 1227. United States Circuit Court of Appeals for the Ninth Circuit. Hugh Madden and William Donohue, Appellants, vs. Jennie C. McKenzie, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Third Division.

Filed August 7, 1905.

F. D. MONCKTON,

Clerk.

